

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0100

**Responsible Officer
Periods 1996 through 1999**

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ISSUES

I. Sales and Withholding Tax: Responsible Officer Liability

Authority: IC 6-2.5-9-3; IC 6-3-4-8; IC 6-8.1-5-1 (b); Indiana Department of Revenue v. Safayan 654 N.E. 2nd 270, 273 (Ind.1995).

The taxpayer protests the proposed assessment of responsible officer liability for unpaid sales and withholding taxes.

STATEMENT OF FACTS

The taxpayer was the president of a company (hereinafter referred to as Company X). On Company X's "Business Tax Application Form" (i.e., Form BT-1) the taxpayer is listed as "President."

In addition, the BT-1 form asks who is the "Person responsible for filing tax forms" for Company X—the taxpayer named himself as that person. At the bottom of the BT-1, below the signature line (which the taxpayer signed as "President"), the following language can be found:

The partners or corporate officers are each *personally*, jointly and severally liable for the sales tax collected and the income tax withheld. The taxes are trust fund taxes and not discharged in bankruptcy proceedings. (*Emphasis added*)

I. Sales and Withholding Tax: Responsible Officer Liability

DISCUSSION

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

The proposed withholding taxes were assessed against taxpayer pursuant to IC 6-3-4-8. Also of import is Indiana Department of Revenue v. Safayan, 654 N.E. 2nd 270, 273 (Ind.1995), which states “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Finally, the Indiana Department of Revenue’s “notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.” IC 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

The taxpayer makes a number of arguments: (1) the taxpayer disagrees with when the proposed assessment period should have ended; (2) the taxpayer contends that he did not have a remitting duty after a certain date; and (3) the taxpayer disagrees with the Department’s proposed assessment amounts.

(1) The taxpayer argues that the business, which was administratively dissolved, actually stopped doing business in late November/early December of 1997. In support of that argument, the taxpayer provided copies of Company X’s bank records for November and December of 1997. The records for December show a series of overdraft fees and a nominal balance, indicating that the business had in fact wound down.

(2) The taxpayer next states that he in fact left the business in August 1997. No evidence to that end was presented (e.g., company minutes; copy of a resignation letter). In correspondence with the Department the taxpayer stated that he “left the business in August 1997.” During the hearing the taxpayer repeated that he left the company in August 1997.

(3) Finally, the taxpayer takes issue with the amounts assessed by the Department. As he states in a letter,

The tax liability figures provided to me are totally unrealistic. The business ... closed prior to Thanksgiving in 1997 and during the last five months, we failed to earn enough money to pay basic costs and in fact were able to only meet payroll for the employees that did not share in ownership.

And in another letter the taxpayer stated that he disputed the amounts for the periods of time April 1996 through November 1997. The Department early on informed the taxpayer the following:

The liabilities for the months of April 1996 through June 1997 are based on returns actually filed. These returns were received by the department without the appropriate amount of tax. The amounts of tax due stated on these returns are deemed correct by the department unless documentation can be presented to the contrary.

And further in the same letter the Department stated:

The liabilities for the months of July 1997 and thereafter are based upon the best information available. If you wish to file sales tax returns for these months at this time, the department will consider them, and (subject to verification) possibly adjust the liabilities accordingly.

Since the taxpayer disputes the proposed assessment amounts, the Department has extended time for the taxpayer to provide his calculations and photocopies of relevant source documents that buttress and support those calculations. The time period elapsed without the taxpayer submitting his documentation.

FINDING

The taxpayer's protest is denied with regards to issues (2) and (3). With regards to issue (1), the bank records do indicate that the business closed at the end of November 1997, and thus the taxpayer is sustained on that issue.

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